

K

1 WILLIAM L. ANTHONY (State Bar No. 106908)
ERIC L. WESENBERG (State Bar No. 139696)
2 MARK R. WEINSTEIN (State Bar No. 193043)
3 ORRICK, HERRINGTON & SUTCLIFFE, LLP
1000 Marsh Road
4 Menlo Park, CA 94025
Telephone: (650) 614-7400
5 Facsimile: (650) 614-7401

6 STEVEN ALEXANDER (admitted *Pro Hac Vice*)
7 KRISTIN L. CLEVELAND (admitted *Pro Hac Vice*)
JAMES E. GERINGER (admitted *Pro Hac Vice*)
8 JOHN D. VANDENBERG
KLARQUIST SPARKMAN, LLP
9 One World Trade Center, Suite 1600
121 S.W. Salmon Street
10 Portland, OR 97204
Telephone: (503) 226-7391
11 Facsimile: (503) 228-9446

12 Attorneys for Defendant and Counterclaimant,
13 MICROSOFT CORPORATION

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 OAKLAND DIVISION

17 INTERTRUST TECHNOLOGIES CORPORATION, a Delaware corporation, 18 Plaintiff, 19 v. 20 MICROSOFT CORPORATION, a Washington corporation, 21 Defendant.	22 MICROSOFT CORPORATION, a Washington corporation, 23 Counterclaimant, 24 v. 25 INTERTRUST TECHNOLOGIES CORPORATION, a Delaware corporation, 26 Counter Claim-Defendant.
---	---

CASE NO. C02-0647 SBA
Consolidated with C01-1640 SBA

MICROSOFT'S INITIAL
DISCLOSURES PURSUANT TO
FED. R. CIV. P. 26(a)(1) ('721 Patent)

1 Pursuant to Fed. R. Civ. P. 26(a), Microsoft Corporation ("Microsoft") makes the
2 following initial disclosures. The initial disclosures are based on information now reasonably
3 available and Microsoft's current understanding of the claims and defenses in this case.
4 Microsoft is not providing documents or information not reasonably available at this time.
5 Microsoft reserves the right to object to discovery into any listed subject matter. Microsoft
6 reserves the right to supplement this initial disclosure pursuant to Fed. R. Civ. P. 26(e).

7 A. Witnesses

8 Microsoft identifies the following potential witnesses who, based on information and
9 belief, are likely to have discoverable information relevant to claims and defenses in the action
10 originally titled C02-0647 EDL (since reassigned and consolidated with C01-1640 SBA), along
11 with the possible subjects of their testimony.

12 Microsoft incorporates by reference the identity of any individual identified in the Patent
13 Office file histories of the patents-in-suit, including U.S. Patent No. 6,157,721 ("the '721
14 Patent"), or involved in the prosecution of any patent-in-suit as being a potential source of
15 discoverable information relevant to the '721 Patent, including but not limited to the named
16 inventors, the prosecuting attorneys, and the U.S. Patent Office Examiners.

17 The individuals listed below may have discoverable information relevant to claims and
18 defenses in this case. The identified individuals may also have information relevant to other
19 subject matter areas that may be revealed upon further investigation of the matters at issue.
20 There may be Microsoft employees, the specific identities of whom are not presently known, who
21 are likely to have discoverable information relevant to claims and defenses in this action. In
22 addition, there may be other persons and entities known to Microsoft who have discoverable
23 information relevant to these subject matters, including Independent Software Vendors, Microsoft
24 certified solution providers, Microsoft certified trainers, application developers, IT professionals,
25 etc. Microsoft reserves the right to identify additional individuals who may have discoverable
26 information relevant to any product that may be accused as infringing the '721 Patent, should
27 InterTrust identify any such product. Microsoft employees may be contacted in this action only
28 through Microsoft's counsel.

1 Microsoft incorporates its disclosure of November 26, 2001 regarding individuals
2 employees who have information concerning pre-suit business negotiations between Microsoft
3 and InterTrust, and licensing of patents-in-suit, and information relevant to prior art to the
4 asserted InterTrust patents. On information and belief, at least the following additional
5 individuals have information relevant to prior art to the '721 Patent: Dorothy Denning, George
6 Davida, Yvo Desmedt, Whitfield Diffie, Robert S. Gray, T.E. Gray, Martin Hellman, Richard J.
7 Linn, Brian Matt, Ralph Merkle, M.M. Pozzo, Dan Wallach, and anyone or anyone else familiar
8 with the use or proposed use prior to the '721 Patent's filing date of cryptographic signatures
9 and/or other "security" in Java, Telescript, Tcl, Verisign or Authenticode. Microsoft further
10 incorporates by reference the identity of the authors, named inventors, and other individuals
11 reflected or referenced in the publications and patents that are listed in the patents-in-suit and file
12 histories or in Microsoft's Notice of Deposition of InterTrust Pursuant to Fed. R. Civ. P. 30(b)(6).
13 Additional individuals potentially knowledgeable about prior art that may be relevant to the '721
14 Patent are reflected in documents produced by Microsoft in this matter. Microsoft also
15 incorporates by reference any individuals disclosed by InterTrust who are likely to have
16 discoverable information relevant to disputed facts alleged in the pleadings. Microsoft reserves
17 the right to supplement the identity of possessors of material information pursuant to the Federal
18 Rules of Civil Procedure and the Local Rules.

19 B. Documents

20 Microsoft has already produced or is producing for inspection and/or copying
21 nonprivileged documents in its possession, custody or control which it may use to support a claim
22 or defense relevant to the disputed facts alleged with particularity in the pleadings. Microsoft
23 objects to the production of attorney-client communications, attorney work product or other
24 information protected from discovery. Documents withheld on grounds of attorney-client
25 privilege and/or work product immunity will be identified on a privilege log to be provided at a
26 time mutually agreeable to the parties or ordered by the Court. Work product and confidential
27 communications seeking or providing legal advice, or pursuant to the seeking or providing of
28 legal advice, between Microsoft (or its agents) and attorneys (or their agents) representing

1 Microsoft in connection with such representation produced after October 17, 1994, are also
2 withheld, without particular identification, as subject to the attorney-client privilege and/or work
3 product immunity. This categorical identification of these documents is considered to satisfy any
4 identification requirements necessary to properly assert privilege for these documents. See
5 Advisory Committee notes to 1993 Amendments to Fed. R. Civ. P. 26(b).

6 C. Computation of Damages

7 As to the infringement claim(s) asserted by InterTrust, Microsoft asserts that it has no
8 liability in relation to the '721 Patent (or any other InterTrust patent asserted in this action), and
9 as a result there is no applicable computation of damages therefor. Microsoft reserves the right to
10 recover attorneys fees and costs to the extent permitted by law. Microsoft anticipates that its
11 response to any computation of alleged damages by InterTrust pertaining to the '721 Patent, and
12 supporting documents and other evidentiary materials, will be made available during the course
13 of discovery, including expert discovery, in this action.

14 D. Insurance Agreements

15 Microsoft is not aware of any insurance agreement relevant to this action under Fed. R.
16 Civ. P. 26(a)(1)(D).

17 Dated: June 5, 2002

18
19
20 By: _____

21 WILLIAM L. ANTHONY
22 ERIC L. WESENBERG
23 MARK R. WEINSTEIN
24 ORRICK HERRINGTON & SUTCLIFFE, LLP
1000 Marsh Road
Menlo Park, CA 94025
Telephone: (650) 614-7400

25 STEVEN ALEXANDER
26 KRISTIN L. CLEVELAND
27 JAMES E. GERINGER
28 JOHN D. VANDENBERG
KLARQUIST SPARKMAN, LLP
One World Trade Center, Suite 1600
121 S.W. Salmon Street

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Portland, OR 97204
Telephone: (503) 226-7391

Attorneys for Defendant
MICROSOFT CORPORATION

DECLARATION OF SERVICE BY E-MAIL AND FIRST-CLASS MAIL

On June 5, 2001, I served:

**MICROSOFT'S INITIAL DISCLOSURES
PURSUANT TO FED. R. CIV. P. 26(a)(1) ('721 Patent)**

by e-mail delivery, and by placing a true copy of this paper in separate envelopes, first-class postage pre-paid, in the U.S. mail addressed to:

Michael H. Page, Esq. Keker & Van Nest, LLP 710 Sansome Street San Francisco, CA 94111 Phone.: 415-391-5400 Fax: 415-397-7188 E-mail: mhp@kvn.com	Stephen E. Taylor, Esq. Taylor & Co. Law Offices 1050 Marina Village Parkway Suite 101 Alameda, CA 94501 Phone: 510-865-9401 Fax: 510-865-9408 E-mail: staylor@tcolaw.com
Steven H. Morrisett, Esq. Finnegan Henderson Farabow Garrett & Dunner Stanford Research Park 700 Hansen Way Palo Alto CA 94304-1016 steven.morrisett@finnegan.com	


James E. Geringer